the seriousness of the breach. See Williston, *Sales,* sec. 453, and compare the discussion of *Helgar Corp. v. Warner's Features, Inc.* (1918, N. Y.) 58 N. Y. L. J. 1780, on page 697 of this number. But such an equitable doctrine is hardly applicable to the case of express conditions. The intent should therefore be very clear before an ambiguous phrase is construed as equivalent to such a condition. Indeed since the notion of a "warranty" as virtually amounting to an express condition has been chiefly confined to insurance and maritime contracts, the courts might well decline to extend it any further. The result in the principal case is therefore to be commended, though the decision would be more satisfactory had it been rested squarely on the first ground.

TAXATION—INHERITANCE AND TRANSFER TAXES—SHAREHOLDERS' INTEREST IN MASSACHUSETTS BUSINESS TRUST.—The testator died domiciled in Massachusetts; part of the estate consisted of shares in a business trust whose trustees were also domiciled there; the trust property was a factory and materials situated in New Hampshire. Objection was made to the assessment of the Massachusetts succession tax on so much of the shares "as constituted an equitable interest in foreign real estate." *Held,* that where the trust fund was ultimately to be converted into personalty for distribution, and where it from the beginning consisted of mixed realty and personalty, it must be treated as converted into personalty from the beginning, so that a succession tax at the domicile of the decedent shareholder was valid. *Dana v. Treasurer & Recvr. Genl.* (1917, Mass.) 116 N. E. 941. See COMMENTS, p. 677.

TORTS—INDUCING BREACH OF CONTRACT—ENGAGEMENT TO MARRY.—The defendants maliciously, and for the purpose of advancing their own pecuniary interests, induced the plaintiff's fiancé to break his engagement with her. *Held,* that these facts gave the plaintiff no right of action. *Homan v. Hall* (1917, Neb.) 165 N. W. 881.

Authorities in point are scarce and unsatisfactory. The court relies chiefly on a passage in Cooley, which in turn cites no authority. Cooley, *Torts* (2d ed.) 277. The leading case for the doctrine that inducing a breach of contract may constitute a tort is *Lumley v. Gye* (1853, Q. B.) 2 E. & B. 216. There are *dicta* in English cases, containing elaborate discussions of this doctrine, which ridicule the idea of recovery in a case like the principal case. *Allen v. Flood* (1897, H. of L.) [1898] A. C. 1, 35; *Glamorgan Coal Co. v. South Wales Miners' Federation* (C. A.) [1903] 2 K. B. 545, 577; *National Phonograph Co. v. Edison Bell Cons. Phonograph Co.* (1906, Ch. D.) [1908] 1 Ch. 335, 350. Finally, there is an American case denying recovery, which also based its decision on the passage in Cooley. *Leonard v. Whetstone* (1903) 34 Ind. App. 383, 68 N. E. 197. The doctrine of *Lumley v. Gye* has been accepted by the United States Supreme Court and by most of our states, with some statutory modifications. *Angle v. Chicago, St. Paul, etc., Ry. Co.* (1893) 151 U. S. 1, 14 Sup. Ct. 240, and cases collected in note, Ann. Cas. 1916 E. 608. At first the doctrine was applied only to labor contracts, but the present tendency is to extend its scope. *Moody v. Perley* (1915, N. H.) 95 Atl. 1047. With reference to actions for interfering with engagements of marriage, it is submitted that there is room for analysis and differentiation with regard to the motives of the defendant and the relationship between the persons concerned. The allowance of the action must ultimately rest on considerations of policy. While it is conceivable that recovery against parents or near relatives acting in good faith from disinterested motives ought to be denied on the ground of privilege, it is difficult to see why recovery should not be allowed against persons standing in no such relation and

actuated by malice or self-interest. Compare the discussion of privilege and motive in tort actions in (1917) 27 YALE LAW JOURNAL, 263.

TRUSTS—RESULTING TRUSTS—INDIRECT PARTIAL PAYMENT BY WIFE FOR LAND CONVEYED TO HUSBAND.—The defendant wife inherited from her father a specific portion of an estate. She did not actually receive the land, but the value thereof was credited to her husband on a purchase of land from the estate by him and in his name. *Held,* that there was a resulting trust in the land in favor of the wife for a proportionate undivided interest. *Hinshaw v. Russell* (1917) 280 Ill. 235, 117 N. E. 406.

The general rule is that where two or more pay the consideration and the conveyance is taken in the name of only one, a resulting trust is created in favor of the others *pro tanto*. *Barrows v. Bohan* (1874) 41 Conn. 278; *Moultrie v. Wright* (1908) 154 Cal. 520, 98 Pac. 257; 1 Perry, *Trusts* (6th ed.) sec. 126. Though the wife paid no money actually in the principal case, the analogy seems close enough to warrant the extension of the general rule to such cases. As regards the relationship, there is a presumption of a gift where one pays for a conveyance to another whom he is under a duty to support. *Dyer v. Dyer* (1788, Exch.) 2 Cox Ch. 92; *Bailey v. Dobbins* (1903) 67 Neb. 548, 93 N. W. 687. But where the conveyance is to the husband and payment is made by the wife, this presumption does not apply. *Silling v. Todd* (1911) 112 Va. 802, 72 S. E. 682; *In re Mahin's Estate* (1913) 161 Ia. 459, 143 N. W. 420. While the conclusion in the principal case seems sound, the language of the opinion leaves much to be desired. For example, the court quotes with apparent approval: "This trust arises, not from a contract or agreement of the parties, but from their acts," and "Its very name implies that it is independent of any contract, and is raised by the law itself upon a particular state of facts." Strictly speaking a resulting trust of the kind under consideration is based upon a presumption that the one furnishing the consideration for the conveyance *intended* that the property should be held for him. This presumption may be rebutted by evidence showing that this was not the intention. H. F. Stone, *Resulting Trusts and the Statute of Frauds* (1906) 6 COLUMBIA L. REV. 326, 330. Much confusion has proceeded from a failure to distinguish clearly between such trusts, based on assumed intention, and constructive trusts, created by the law regardless of intention. The principal case helps little to clear up this confusion.

WILLS—INCORPORATION BY REFERENCE—PREVENTING LAPSE OF POWER OF APPOINTMENT BY INCORPORATING DONEE'S WILL.—The testator's will gave his wife a power of appointment and provided that in case they should die in a common disaster his will should be construed on the assumption that she survived him. The wife executed a will at the same time, attempting to exercise the power. Husband and wife were lost at sea with the Lusitania. *Held,* that the property passed under the husband's will to the person in whose favor the wife had attempted to exercise the power, her will being incorporated by reference into his. Crane, McLaughlin and Cuddeback, JJ., *dissenting*. *In re Fowles' Will* (1918, N. Y.) 118 N. E. 611. See COMMENTS, p. 673.

WILLS—LEGACIES CONDITIONED ON NOT CONTESTING WILL—WAIVER OF FORFEITURE.—A will created a trust for the testator's children and directed that if any child should contest the probate or operation of the will, the provision for such child should be void and his share should pass to the other children. All the children appealed from the order of probate on the ground that the testator